

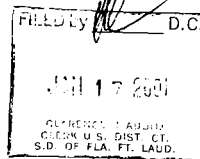
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DAVID G. TRACY,
Petitioner,

CASE NO. 01-6002-CV-DIMITROULEAS
(00-6028-CR-DIMITROULEAS) ✓

vs.

UNITED STATES OF AMERICA,
Respondent.



ORDER

THIS CAUSE having been heard upon Petitioner's (Tracy) January 3, 2001 Verified Motion for Writ of Habeas Corpus, and the Court having reviewed the Court files, having presided over a criminal trial in 00-6028-CR-DIMITROULEAS, finds as follows:

1. On February 1, 2000, Tracy was indicted and charged with three (3) counts of tax evasion. [CR-DE-3].

2. On March 30, 2000, this Court denied Tracy's Motion to Dismiss Fatally Defective Indictment. [CR-DE-30]. On April 4, 2000, a Motion for Reconsideration was denied. [CR-DE-36].

3. On May 12, 2000, Tracy's Motion to Quash Indictment was denied. [CR-DE-45].

4. On May 19, 2000, Tracy's Motion to Dismiss was denied. [CR-DE-56].

5. On May 22, 2000, Tracy's May 19, 2000 Motion to Dismiss was denied. [CR-DE-59].

6. On June 1, 2000, the Jury found Tracy guilty of Count III. [CR-DE-69].

7. On June 2, 2000, Tracy filed a Petition for Common Law Writ of Habeas Corpus in Case No. 00-6759-CV-DIMITROULEAS. On June 5, 2000, this Court denied relief. [CR-DE-73]. In Footnote 1 of Page 2 of that order, this Court found that the petition was really filed under 28 U.S.C. § 2255 and not 28 U.S.C. § 2241. On August 1, 2000, the Eleventh Circuit Court of Appeals dismissed an appeal.

8. On July 3, 2000, Tracy filed another Petition for Common Law Writ of Habeas Corpus

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in Case No. 00-6913-CIV-DIMITROULEAS. On August 23, 2000, this Court denied the petition.

9. On August 21, 2000, Tracy was sentenced to 18 months in prison. [CR-DE-89].

10. An appeal is pending before the Eleventh Circuit Court of Appeals in Case No. 00-11936-D (CR-DE-107).

11. Tracy has filed other petitions related to this criminal charge: 00-6214-CIV-SEITZ and 00-6366-CIV-DIMITROULEAS.

12. In this latest petition, Tracy complains about the sufficiency of the evidence (deficiency), the indictment ("person" and "penalty provision"), and the Court's jurisdiction.

13. Since Tracy has a direct appeal pending, he is not entitled to consideration of this 2255 motion on the merits. United States v. Khoury, 901 F.2d 948, 969 (11th Cir. 1990). There are no extraordinary circumstances that would warrant this Court entertaining this 2255 motion while an appeal is still pending. Kapral v. United States, 166 F.3d 565, 572 (3d Cir. 1999).

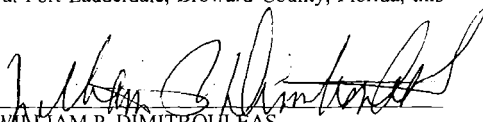
14. This Court need not address whether this petition is also barred as being successive.

WHEREFORE, Tracy's Motion for Writ of Habeas Corpus is DISMISSED.

The Clerk shall close this case.

DONE and ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this

17 day of January 2001.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
David G. Tracy, #55191-004
FPC Pensacola
110 Raby Avenue
Pensacola, FL 32509-5127

Matthew Menchel, AUSA